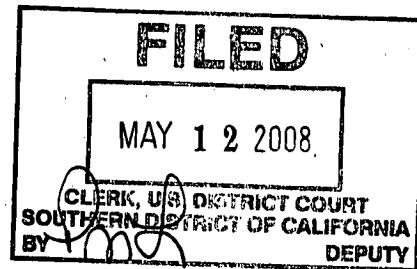


1 KAREN P. HEWITT  
 2 United States Attorney  
 3 REBECCA S. KANTER  
 4 Assistant United States Attorney  
 5 California State Bar No. 230257  
 6 United States Attorney's Office  
 7 Federal Office Building  
 8 880 Front Street, Room 6293  
 9 San Diego, California 92101  
 10 Telephone: (619) 557-6747

11 Attorneys for Plaintiff  
 12 UNITED STATES OF AMERICA



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 UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) Criminal Case No. 08cr0899-BTM  
 12 )  
 13 Plaintiff, ) STIPULATION OF FACT AND JOINT  
 14 v. ) MOTION FOR RELEASE OF  
 15 ) MATERIAL WITNESS AND  
 16 ) ORDER THEREON  
 17 )  
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IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Rebecca S. Kanter, Assistant United States Attorney, and defendant REYNALDO CRUZ-GONZALEZ, by and through and with the advice and consent of defense counsel, Debra Ann DiIorio, Esq., that:

1. Defendant agrees to execute this stipulation at the next court appearance and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to count two of the superceding information charging defendant with Bringing In Aliens Without Presentation, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and Title 18, United States Code, Section 2.
2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government.

1           3.    Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 2 before **April 25, 2008**.

3           4.    The material witnesses in this case, Manuel Leyva-Romero and Felipe Barba-Garcia:

4               a.    Are aliens with no lawful right to enter or remain in the United States;  
 5               b.    Entered the United States illegally on or about March 3, 2008;  
 6               c.    Entered in the trunk of a vehicle driven by co-defendant Dionery Medina-Soto  
 7 at the San Ysidro, California Port of Entry (POE) and were driven to Defendant's house at 21 East  
 8 2nd Street, National City, California;

9               d.    Were having others pay on their behalf \$3,500-\$3,600 to others to be brought  
 10 into the United States illegally and/or transported illegally to their destination therein;

11               e.    Defendant knew or acted in reckless disregard of the fact that they were aliens  
 12 with no lawful right to enter or remain in the United States; and,

13               f.    May be released and remanded immediately to the Department of Homeland  
 14 Security for return to their country of origin.

15           5.    After the material witness is ordered released by the Court pursuant to this stipulation  
 16 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
 17 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
 18 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

19               a.    The stipulated facts set forth in paragraph 4 above shall be admitted as  
 20 substantive evidence;

21               b.    The United States may elicit hearsay testimony from arresting agents  
 22 regarding any statements made by the material witness provided in discovery, and such testimony  
 23 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
 24 of an unavailable witness; and,

25               c.    Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
 26 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
 27 and cross-examined the witness who made the "testimonial" hearsay statements, defendant waives

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 Material Witness And Order Thereon in

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1 the right to confront and cross-examine the material witness in this case.

2 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
3 read it. Defendant certifies further that defendant has discussed the terms of this stipulation and joint  
4 motion with defense counsel and fully understands its meaning and effect.

5 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
6 immediate release and remand of the above-named material witness to the Department of Homeland  
7 Security for return to their country of origin.

8 It is STIPULATED AND AGREED this date.

9 Respectfully submitted,

10 KAREN P. HEWITT  
United States Attorney

11 Dated: 5/8/08

12   
REBECCA S. KANTER  
Assistant United States Attorney

13 Dated: 5/8/08

14   
DEBRA ANN DIORIO  
Defense Counsel for CRUZ-GONZALEZ

15 Dated: 5/8/08

16   
REYNALDO CRUZ-GONZALEZ  
Defendant

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## ORDER

2                   Upon joint application and motion of the parties, and for good cause shown,  
3                   **THE STIPULATION** is admitted into evidence, and,  
4                   **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5 forthwith to the Department of Homeland Security for return to their country of origin.  
6                   **SO ORDERED.**

**SO ORDERED.**

7  
8 Dated: 5-12-08

  
United States Magistrate Judge  
District

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